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DISCUSSION OF THE ADMINISTRATIVE ORGANIZATION OF THE COURTS

WILLIAM L. RANSOM, Judge of the City Court:

Judge McAdoo has given you a vivid and, I think, also accurate picture of conditions in the magistrates' courts and in the administration of the criminal law generally in this city, and if the function of opening the discussion on this occasion called for criticism or the development of points of divergence, I am frank to say that I would of necessity remain silent at this juncture.

There has been a great improvement in the administrative side of the work of the criminal courts of this city, and I am only sorry that it is not true that similar improvement has yet come about in the administrative organization of the civil courts, particularly those which similarly are municipal or local in their status. Ex-President Taft said a few years ago that of all the subjects before the American people, the most important of all, in his judgment, was the improvement of the administration of justice in this country. A year or a little less ago, the National Economic League conducted a referendum poll of its members to determine what project of public betterment should be deemed most important and worthy of the active attention of that league. The poll of its representative membership placed first the improvement of the administration of justice. There is propriety as well as public importance in such a discussion as you conduct to-day. This whole series of conferences has concerned the municipal government. You have been discussing the relation of the city government to, and the responsibility of the city government for, various phases of governmental activity within the city of New York. I am very glad that there has been included within the program of this series of conferences a reference to the administrative organization of the courts, because it is not generally recognized that the city or its municipal government as such has any particular relation to, or any responsibility for, or any great concern about, the administration of civil or criminal justice within the city, or the organization of courts which perform that function of government.

The administrative organization of the courts involves something more than the inter-relation of courts and the number or salaries of judges. Back of and in addition to the judges themselves, the work which they personally perform, and the expense imposed on the community by their salaries, there is the great administrative staff of the

courts, which performs no small part of the work of administering justice and is responsible for no small part of its cost. There is before the people of this state and before the constitutional convention at Albany no subject more important, in my judgment, than the bringing about within the city of New York, on sound and constructive lines, some adequate reorganization of the administrative side of the work of our courts, civil and criminal.

Comptroller Prendergast, of this city, gave out the other day an interesting statement which visualizes the thing that I have in mind. His statement shows the purposes for which each one hundred dollars raised within the city of New York by taxation are expended. In putting emphasis at the outset upon the merely financial side, I do not mean to overlook the other and more important side, though I probably shall have no time to discuss the latter here to-day. The financial side, however, illustrates and makes concrete what I have in mind. Out of every \$100 raised within the city of New York by taxation, Comptroller Prendergast points out that our splendid department of health, administered by Dr. Goldwater, which does such a multitude of excellent things, receives only \$1.79. The tenement house department, about which the city is at present so much stirred on account of a claim of great expensiveness and unnecessary duplication in the work which it is doing, costs only \$0.39 out of each \$100. For public recreation, parks and parkways, drives, museums and the like, the city spends out of each \$100 only \$1.75. And yet the courts within the city of New York, and the various phases of the administration of justice, civil and criminal, by the courts within the city, cost more than \$5 out of every \$100 raised by taxation, and the total cost of your judicial system is eight to ten million dollars per year.

That is not due primarily to the salaries of judges. For example, in the boroughs of Manhattan and The Bronx, out of the total cost of the administration of justice in the supreme court, only 22% represents the salaries of the judges of that court. In other words, the salaries of the justices of the supreme court in the boroughs of Manhattan and The Bronx are not quite \$1,100,000; while the salaries of the clerical force are nearly \$1,300,000, and in addition to that there is a salary list of nearly \$700,000 per year for the attendants of the courts. On the civil side of the supreme court in the boroughs of Manhattan and The Bronx, the salaries of the judges are \$660,000 per year; the salaries of their clerks are \$774,000; the salaries of their stenographers are about \$290,000; and the salaries of their attendants are nearly \$660,000. The situation in the supreme court is really typical of that in other

courts, though I think that the figures show that the city court has rather a good organization and record in this respect at the present time. There has been built up a great unorganized and unintegrated body of subordinates, the volume of whose annual salaries substantially exceeds the salaries of the judges themselves, so that for every case which is tried, for example, in the supreme court of this state within this county or the county of The Bronx, it costs the people of the county more for the attendants and clerks than it does for the judge who presides over the trial. That illustrates the administrative problem. The situation is not dissimilar in other courts.

I wish that I had time to run over figures showing the evident duplication and lack of coordination in the administrative organization of the various courts of the city. Each court has its own clerk, its own staff of subordinate clerks, and its own body of attendants. Expenditures for their salaries, although placed in the budget which is necessarily raised by the authorities of the city through public taxation, nevertheless are expenditures substantially without responsible and centralized public control, except in so far as some indirect control is exercised in some instances by the judges themselves.

In what I am saying here to-day, I am not criticizing the justice of any court, or its subordinates in any capacity, least of all those of my own court. On the whole, I think that both justices and subordinate staffs do pretty well, in view of the cumbersome administrative organization imposed by provisions of the code, the judiciary law, and various special acts in relation to particular courts. The system is loose, uncoordinated, costly, and unsuited for the results sought; the men who make up this system I have found almost without exception courteous, loyal, painstaking, conscientious, and reasonably competent for the work entrusted to them. If anyone finds any attaché of my court less than this, I hope he will speedily inform the chief justice and me. The looseness of the system is no fault of the subordinates now in office under it. On the whole, they deserve credit for doing so well under so bungling and awkward an organization of our local judicial system. The need and the public importance of the early and adequate consideration of the whole subject does not, however, in my judgment, depend in any way upon personal criticism of the men who are rendering faithful public service at disproportionate salaries in inconspicuous positions. I may say also that in my judgment the problem will not be solved merely by the enactment of such measures as have lately passed the legislature, dealing with the court of special sessions, the magistrates' courts, and the municipal court of this city. Excellent as those measures are in some

of their provisions, they must be regarded as patching and postponing, rather than really solving, the problem.

In other cities the problems of the courts within the city has often-times been dealt with in very direct and constructive ways. Instead of this lack of organization or coordination of clerical force, this evident duplication of jury panels, attendants, stenographers, interpreters, and other administrative expenses, instead of this conflict of jurisdiction, to only one phase of which Judge McAdoo has directed attention but which is even many times worse in some of the civil courts than in the criminal, there has been brought into being a centralized court, a court which represents all of the city and has jurisdiction to deal substantially with all the classes of controversy, civil, and criminal which come within the jurisdiction of the court or which may be called local or municipal in their nature. Such a court as has been brought into being in the municipal court of Chicago and in the similar courts of other cities deserves the most careful consideration of the constitutional convention, to the end that the condition to which I have only briefly drawn attention may be dealt with and ended.

GEORGE W. ALGER, Esq.:

The subject so interestingly discussed by these two learned judges is one of the most pressing judicial questions now before the American people. The administrative organization of the courts is one of the new subjects. We have been effecting various law reforms for ten or fifteen years. We have a mania in this country for patchwork reform not taking things fundamentally but taking them piece-meal; consequently we have a sort of Joseph's coat of justice of many colors, which represents various attempts at changing procedure, at eliminating technicalities in criminal cases, at transferring jurisdiction from one court to another, and at making somewhat simpler the ordinary machinery by which justice is to be obtained in the courts. But the two fundamental questions which sooner or later must be taken up before we have anything like efficient justice in America are: first, the organization of the courts themselves on a scientific basis; and second, a more intelligent method for the selection of judges. It is only the first of these subjects with which I have to deal.

I have been much interested, as you all have, in hearing Judge McAdoo. The court which he represents is one of the courts of promise in this country. Everything which he has told you about the old conditions in that court I certainly can vouch for myself, and I doubt not many others of you have been familiar with the old police court. In five years it has been transformed. What has brought about the change? What

has made a real court out of what was one of the most despised forms of magistracy in the country? The reorganization of that court on an intelligent basis; the creation of a chief magistrate who has been made responsible for the conditions of its work, for its organization and administrative management, with a chief clerk who has responsibility for the handling of the clerical force of the court throughout the city; and the placing of that combined responsibility in the hands of a responsible man who knows his job,—this has transformed an exceedingly bad court into one of the best of its kind in the United States. There is no court in New York for which I have as much respect as I have for the court over which Judge McAdoo presides. You can't go into the present magistrates' court without feeling that you are in the presence of a tribunal which has unity and dignity, and that its magistrates are keenly alive to a sense of duty. That is the result not merely of having a good chief justice to whom we can go if we don't like the way his court is run and who will be glad to see us; it is due not only to that, but to the correct organization of the court. This is the only really organized court in the state of New York, and it shows what can be done by proper organization.

We have not developed efficient organization in our courts largely because we have overdeveloped in America the slightly out-of-date virtue of judicial independence. It was natural for us to do it at the time our country severed its relations with England. At that time our judges were subservient to the crown. All our colonies had unpleasant memories of colonial judges who received their salaries from England and who used their office to abuse their fellow-citizens in this country, and accordingly we determined at all hazards to have independent judges. We have overdeveloped the notion of independence just as the French have overdeveloped the idea of system.

Proceeding along diverse lines, both have produced irresponsibility. The French have over-organized their courts so that the judge, feeling himself a mere cog in a judicial machine, shifts his responsibility on to the state or the government of which he feels himself a small and irresponsible part. Those of you who will read the recent book of Faguet on *The Dread of Responsibility* will get a clear picture of the over-development of organization, just as one would, if he made a study of the lack of judicial organization in our country, get a clear picture of irresponsibility created by the over-individualistic, haphazard and chaotic organization in our courts.

The current conception of a judge is that he should be alone with God, that he should be free from all possible notions of responsibility

to anybody but his Maker. It imposes too heavy a burden upon his Creator. In our supreme court, for example, you have a series of twenty-odd judges, each of them practically in an air-tight compartment operating an individual court to suit himself. There is no chief magistrate. There is no one to whom a judge is practically responsible. If he does not handle his calendar in an intelligent way, if he wastes the time of thirty lawyers for three weeks hanging around answering calendars when there is no prospect of their cases being reached, there is nowhere to go. If he wastes the time of countless jurors by letting them hang around the court where there is no real use for them, there is nowhere to go. He has no responsibility except to another court (or rather it is theoretically a separate branch of his own court), the appellate division of the supreme court, located up town in an entirely different section of New York, which makes the rules of the supreme court down below, which makes the assignment of the judges to the places where they shall hold court down below and which regulates from afar the operation of the supreme court. Why should you not have a wasteful system when you have no system at all?

Consider the city courts, of which Judge Ransom is one of the most efficient and hard-working judges. You have ten judges who do not necessarily have to know one another. They are in separate compartments, each running his court to suit himself. Some of them really come promptly when the time for court opens; some of them come half or three-quarters of an hour late; but there is no efficient, responsible organization at all.

The attempt at the recall of judges which passed over the United States in the last few years had as its basis, I have always felt, that feeling of indignation at the lack of effective responsibility on the part of the bench to an authority within itself; and because there was no inner responsibility, such as exists in the magistrates' courts, no responsibility of the judge to his own judicial organization, the people thought, "Let's make him responsible somehow; let's have at least a clumsy external method of creating responsibility." Doubtless it was a failure, but it was a groping for an idea. We need some constructive organization of our courts for many reasons. We need it because none of us does his best work when he feels that he is under no responsibility to anyone, that his work is not checked up to see whether it is good, bad or indifferent. It is only within recent years that any one could find out what the record of any supreme court judge was, whether his decisions had been reversed in half or three-quarters of his cases when they went up on appeal or whether he had performed his duties intelligently; and I don't

believe to-day that you can find out as to the inferior courts what the judge's record is; there is no means of knowing. We have simply given them that notion of personal independence without the notion of personal responsibility. The principle of personal responsibility is the idea which is back of the organization of the courts.

Judge McAdoo has told you about the organization of his court and the effect of this new law which is likely to add greatly to its usefulness and importance. At this same session of the legislature, another bill was passed to reorganize the civil court which corresponds in a way to Judge McAdoo's criminal court. By it the lowest of our civil courts, the municipal court, has been theoretically reorganized, but the organization did not proceed upon an intelligent plan of coordinating into a centralized system this municipal court, which has forty-six judges spread into twenty-four districts in six counties. It has the thing which Judge McAdoo's court escaped from, a sort of board of judges who get together and elect somebody as a presiding officer who can do what the board tells him he may do, and that is very little. There is no centralized authority at all, no chief justice, no chief clerk, no means of control over the multitudinous class of civil or generally uncivil employes which you find in all these courts in the clerical department; the clerks, the attendants and the interpreters. The clerk in a municipal court, if he misbehaves, can be removed by the judges who are elected in the district in which that clerk's office is located, but the law also says that no judge shall stay for two months in the same district, so these jumping judges who go from one part of the city to another are supposed to supervise as they go along the general administration of the miscellaneous courts through which they pass. How much of an administrative organization can you expect from a court which is chaos personified in this fashion? Obviously none.

Certain features of that new municipal court act are doubtless good, but they are the old-line features. There are changes in jurisdiction, changes in procedure and putting other patches on various parts of the court organization which appealed to lawyers, but which do not effect anything substantial. You can't patch courts together. They have got to be reorganized. We began without any organization; we have gone for one hundred and fifty years without anything that remotely resembles organization, and until the time comes when a sufficient amount of public opinion comes from outside—I am talking now not about the lawyer but about the layman—until such time as the intelligent and efficient business man in this city and state realizes that it is something in which he is interested we shall not make any very serious changes in the courts.

Eight million eight hundred and sixty thousand dollars is what the courts cost in this city last year—a pretty fairly heavy bill. If that money has been wasted to a large extent, if it has gone to pay a great mass of absolutely unnecessary salaries which the legislature has put into the so-called judiciary act, if this has been done simply to furnish additional and wasteful jobs, it is a matter which should interest not merely the legal profession but every taxpayer and every citizen of New York. Fundamentally, we must have responsibility; as much judicial independence as is consistent with judicial responsibility, and judicial responsibility created by an organization to which the judge is amenable and which is capable of criticizing his work from within instead of leaving it to the newspapers outside. You never can expect to get any blunderbuss in the form of a recall or in the form of an impeachment which is likely to do the judiciary much good. The criticism has to be a self-criticism from within, as in the municipal court of Chicago, where the chief justice has some measure of actual control over the associate judges. He can transfer the judges where he pleases. If he finds a man is not up to his job and is not performing his duty properly, he can put him in some very unimportant portion of the machinery of things, which is an effective discipline. He can keep those judges "on their toes" for efficiency. Not so in New York. The so-called presiding justice of the municipal court, under this new law which is supposed to represent a great advance, cannot even transfer a judge from one borough to another, from a borough where he is not working to a borough where more judges are badly wanted, unless the judge consents to being transferred.

The municipal court of Chicago now tries annually more cases and they result in judgments for a larger sum of money than does the High Court of Justice in England. That court was less than ten years ago a scandalous court composed of miscellaneous justices of the peace who did not do their work properly or honestly; but by organization, by having a good chief justice at the head of it, a transformation has taken place in the municipal court there on the civil side comparable with that which has taken place on the criminal side under Chief Magistrate McAdoo here in New York. This administrative idea, this organization of courts is a tremendously important thing. It is new and we ought to interest ourselves in it. The associations like the American Judicature Society which are taking it up ought to have the co-operation not only of lawyers but of laymen as well, because it is not merely a law question; it is a question of business organization and it is fundamentally the most effective way to get speedy and certain justice.